



**NOT REPORTABLE**

**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK**

**REVIEW JUDGMENT**

**CR No: 6/2017**

**THE STATE**

versus

**HAROLD HENGARI**

**ACCUSED**

(HIGH COURT MAIN DIVISION REVIEW REF NO. 1538/2016)

(MAGISTRATE'S SERIAL NO. 22/2016)

**Neutral citation:** *S v Hengari* (CR 6/2017) [2017] NAHCMD 11 (23 January 2017)

**Coram:** LIEBENBERG J and SHIVUTE J

**Delivered:** 23 January 2017

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## ORDER

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- a) The conviction is confirmed.
- b) The sentence on the review cover sheet is set aside and replaced with the following sentence:
- Fifty two (52) months imprisonment of which (10) months are suspended for five (5) years on condition accused is not convicted of stock theft committed within the period of suspension.

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## REVIEW JUDGMENT

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SHIVUTE J ( LIEBENBERG J concurring):

[1] The accused was convicted of stock theft read with the provisions of the Stock Theft Act 12 of 1990 as amended. He was sentenced as follows:

‘Fifty two (52) imprisonment of which imprisonment of which (10) months imprisonment is suspended for five (5) years on condition accused is not convicted of stock theft committed with the period of suspension.’ (sic)

[2] I directed the following query:

‘2. The sentence appears to be clumsy. What did the learned magistrate have in mind when imposing the above sentence?’

[3] The learned magistrate replied:

‘It is conceded that the sentence on the review cover indeed looks clumsy. That was not the intention of the trial court. It appears there was a typographical error which I failed to pick during corrections. What appears ‘as with’ was actually meant to read ‘within’ as per hand written sentence. When the trial magistrate took the hand written sentence to the typist she could only read ‘within there in as ‘with’ and this explains why it came out ‘as with’. The record is being resubmitted corrected. The oversight is sincerely regretted and

the trial magistrate shall endeavour to ensure the records are properly and thoroughly corrected.'

[4] The sentence is formulated in such a clumsy way that it is also confusing. The review sheet only indicates that accused is sentenced to '52'. It does not specify whether accused is sentenced to 52 months or days. However, on the handwritten record, it is written '52' months although it appears to be deleted. It appears the learned magistrate had 52 months in mind. Since the sentence is not very clear, the following order is made:

- a) The conviction is confirmed.
- c) The sentence on the review cover sheet is set aside and is replaced with the following sentence:

"Fifty two (52) months imprisonment of which (10) months are suspended for five (5) years on condition accused is not convicted of stock theft read with the provisions of the Stock Theft Act, committed within the period of suspension."

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N N Shivute

Judge

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JC Liebenberg

Judge